



Pesticide and Fertilizer Containment and Private Applicator Compliance Update

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FACT SHEET

Bulk Pesticide Containment

The first bulk pesticide containment regulations went into effect in 1977. They were revised in 1985 and again in 2002.

A bulk pesticide is either a liquid with a container capacity of more than 55 gallons or dry with a container capacity of 100 pounds. A bulk container may be permanent (non-movable). Wherever bulk pesticides are stored, and an aggregate amount of all chemicals stored reaches 1,000 gallons for liquid or 3,000 pounds for dry in any 365-day period, secondary containment is required. Secondary containment designs may vary, but all materials must be chemically compatible with the products stored.

A load pad is required wherever pesticides are stored in bulk quantities. However, an exemption is allowed when the facility handles only sealed containers that are loaded onto or off of delivery vehicles.

If pesticide products are applied to property owned or operated by the applicator, a mobile container of 350 gallons may be stored at a specific location for up to 60 days in any 365-day period without secondary containment or a load pad.

Facilities were given until December 27, 2003, to complete bulk pesticide containment applications and to compile required information. They also were given two years to construct or modify their containment systems.

As of September 28, 2004, 306 secondary containment applications have been received. Of those, 104 have been approved. The remaining 202 are awaiting final review and approval. They are facilities with existing secondary containment, and they will be reviewed by the end of 2004.

Bulk Fertilizer Containment

Bulk fertilizer containment regulations went into effect in 1991 and were amended in 2003.

Current regulations clarify application requirements, make changes to mobile storage tank requirements, and require bladder tank and innovative design applications to be submitted with professional engineer-stamped plans.

Mobile storage tank changes include bulk delivery record keeping requirements and extend from 15 day to 60 days the time that bulk fertilizer can be stored on-farm without secondary containment.

Secondary containment is required when liquid fertilizer storage containers reach a total capacity of

2,000 gallons. Fertilizer volume is determined by the total capacity of all storage containers located in one area. A load pad is required once the volume liquid fertilizer transferred from the facility reaches 125 tons.

Liquid fertilizer storage containers are exempt from secondary containment requirements if they are used for mobile or temporary storage no longer than 60 days.

Dry fertilizer must be stored and handled in a manner that prevents pollution and minimizes loss.

Fertilizer Containment Inspections

Record keeping requirements were incorporated into fertilizer containment regulations, so inspectors are able to track fertilizer sales in quantities of 2,000 gallons or more, the threshold for secondary containment and load pad requirements.

Using fertilizer records, we were able to identify buyers we believed were subject to secondary containment regulations. Since January 2004, we have conducted 27 on-farm inspections and found that 23 of them were complying with containment regulations. We will increase our inspections next spring, when most farming activities resume.

Fertilizer staff also complete facility audits during delivery season (March through May and September through November). Early results of these audits indicate that facilities with bulk sales have an average of two bulk purchaser names that require follow-up.

We identified 86 people who had bulk purchases. Of those, 56 used the product within 60 days and 22 needed secondary containment. Of those 22, two altered their storage practices to comply with the 60-day limit, three had secondary containment systems approved and one has an application that is being reviewed by our contract engineer.

Private Pesticide Applicators

Kansas law allows making a distinction between private and commercial pesticide applications. Private applicators can be certified by the department to use or supervise the use of restricted use pesticides for growing crops on property he or she owns or rents. Private applicators cannot apply pesticides to another person's property for pay, but they can trade services. That means a private applicator can apply a pesticide to a neighbor's crop in exchange for a service from the neighbor, like help at planting or harvest.

Complaint Follow-Up

During the 2004 session, Senate Bill 464 was introduced in the Kansas Legislature. If passed, the

bill would have required applicators to register their equipment with the Kansas Department of Agriculture.

As SB 464 was being discussed, 43 commercial facility owners said producers were storing bulk pesticide and fertilizer without proper containment or they were making commercial pesticide applications without a proper license. Seven of the 43 facility owners said they could identify individual violators by name, but none were willing to sign formal complaints.

Without formal complaints, we had no information on which to base investigations. Instead, we prepared educational packets addressing containment and commercial pesticide application requirements. We also cross-checked the names with our compliance database to find out if we had prior interaction with the individuals. We will visit producers with whom we've had previous contact.

Between July and November 2003, we received three storage and containment complaints. On investigating, we found one to be in compliance, one where bulk containment and a load pad are to be built, and one where drift by a private applicator was confirmed and a warning was issued.

In April 2004, we had one complaint of a dealer not being registered. On investigation, we found the dealer was registered.

Between April 2003 and September 2004, we had 30 license-related complaints:

- Two resulted in field notices, where minor violations were noted. The field notice allows us to document the violation in our compliance database.
- Two notices of noncompliance were settled and closed and the violator was fined.
- Two notices of noncompliance resulted in summary orders.
- Five notices of noncompliance were issued. These formal warnings document first-time violations or violations where there was insufficient evidence of more serious violations.
- Three were closed by field staff because no violations were found.
- Twelve were alleged to have made pesticide applications without a pesticide business license. Because we had no evidence on which to base administrative action, we sent these individuals a letter by registered mail outlining the requirements for licensing. This establishes that the person is knowledgeable about the requirements.

Complaints are an enforcement priority for the Pesticide and Fertilizer program, and the same enforcement standards are applied to all complaints regardless of their source. Anonymous complaints, however, are more challenging to investigate. Without a signed complaint, we are challenged to find material facts to document for an administrative action. Even if we cannot verify a violation based on a complaint, we do give the alleged violator educational materials to promote compliance.

Common Questions

Q. If you find someone making pesticide applications without the appropriate license, how long does that person have to come into compliance?

A. There is no grace period for making commercial pesticide applications without a pesticide business license. We immediately document the violation and the individual is told to cease applications until he or she has appropriate certification and licensing. Repeat violators will be subject to administrative action, including being assessed civil penalties.

Q. If you find someone storing product without containment, how long does that person have to come into compliance?

A. Thirty days, whether a producer or commercial facility.

Q. If you find large pesticide or fertilizer tanks but they don't have anything in them, do you reinspect at a later date?

A. A producer with a large tank without any product in it is not violating the law. We do, however, share informational materials and review containment requirements with the producer. After that, we will periodically check the tank to see if it's been filled.

Q. Are farmers given advance notice of inspections for licensing or containment? If so, how much notice are they given? What is the basis for giving notice?

A. Our inspectors conduct USDA record keeping inspections, facility-to-farm inspections, chemigation equipment inspections and complaint investigations. We schedule these inspections ahead of time so we know the producer will be at home, which helps us use inspector time wisely.

There is no predetermined length of notice. Appointments are scheduled at the first mutually agreed upon time. Also, since most of our farm visits involve some level of outreach, scheduling an appointment promotes an atmosphere of cooperation.